

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:

BRONSON BENJAMIN,
Complainant,

and

R&R FLEET MAINTENANCE, INC.,

Respondent.

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) Charge No: 2006CN0697
) EEOC No: N/A
) ALS No: 07-035
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RECOMMENDED ORDER AND DECISION

On August 27, 2008, an order was issued holding Respondent Corporation in default for failing to appear at scheduled hearings and for failing to obtain substitute counsel to represent it in this action. The order set this matter for a hearing on damages. A public hearing on damages was held on January 7, 2009. Respondent failed to appear to participate in the public hearing.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. It is therefore named herein as an additional party of record.

The Complaint alleges that Respondent subjected Complainant to discrimination based on physical handicap in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.* Respondent was held in default by order of August 27, 2008, for failing to obey Commission orders to appear at scheduled hearings in this matter and for failing to obtain substitute counsel.

FINDINGS OF FACT

The following are facts derived from the record or are facts deemed admitted pursuant to the August 27, 2008 Order holding Respondent in default or are facts that were proven by a preponderance of the evidence at the public hearing on damages. Assertions made at the public hearing that are not addressed herein were determined to be unproven or were determined to be immaterial to this decision.

1. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on September 26, 2005. On January 23, 2007, the Department, on behalf of Complainant, filed a Complaint with the Illinois Human Rights Commission (Commission) alleging Complainant to have been aggrieved by practices of physical handicap discrimination by Respondent in violation of Section 2-102(A) of the Act.
2. Respondent is an employer within Section 2-101(B)(1)(a) and (b) and the Act.
3. Russell Ogorek (Ogorek) was owner of Respondent, R&R Fleet Maintenance, Inc., from September 20, 2004 until June 8, 2005.
4. Respondent hired Complainant on or around September 20, 2004 as a Diesel Mechanic. Complainant had a physical handicap of blindness in the right eye at the time he was hired.
5. Throughout his employment with Respondent, Complainant performed his duties in an acceptable manner consistent with Respondent's standards.
6. Complainant's five-count Complaint alleges the following.

Complainant's Count I alleges that Respondent subjected Complainant to harassment because of his handicap when Respondent subjected Complainant to the following derogatory comments:

On or about April 28, 2005, Russell Ogorek (Ogorek), owner, told Complainant: "What the fuck. Can't you see what the hell you are doing; I don't trust your eyes man. You are not worth anything."

On or about May 3, 2005, Ogorek told Complainant: "I can see over the paint on those panels. What, Bronson, you can't see that. Oh! You only got one eye anyway. You are worthless!"

On or about May 5, 2005, Ogorek told Complainant: "You are not worth the raises that are due. You know why? Here's why. You are worthless, only got one eye, and can't use the tools without breaking them."

On or about May 24, 2005, Ogorek told Complainant: "You dumbfuck! Open your fucking eyes. Open your fucking eyes and watch what the fuck you are doing! It's your eyes, man. You are not worth anything."

On or about May 24, 2005, Ogorek told Complainant: "Maybe you should look into cleaning truck stops. That's about... all a person in your condition can do."

Complainant's Count II alleges:

Respondent issued Complainant a written warning because of his physical handicap.

On or about April 28, 2005, Respondent issued Complainant a written warning for failing to follow Ogorek's directions; Complainant complied with Ogorek's directions; in early May 2005, non-handicapped mechanics, such as Jaime Macias and Miguel Jimenez, failed to follow Ogorek's directions when they were cutting flooring; Respondent did not issue a written warning to Macias or Jimenez.

Complainant's Count III alleges:

Around May 3, 2005, Respondent issued Complainant a written warning because of his handicap.

Respondent's stated reason for issuing Complainant a written warning is that Complainant scratched the panel of a customer's trailer; Complainant asked Ogorek to move out of the way so that Complainant could have enough space to avoid hitting the trailer, but Ogorek did not move out of the way; in June, 2005 Miguel Jimenez, a non-handicapped mechanic, became injured at work because he failed to abide by Respondent's procedure to wear safety glasses; Respondent did not issue Jimenez a written warning for violating Respondent's safety procedures.

Complainant's Count IV alleges:

Around May 24, 2005, Respondent issued Complainant a written warning because of his handicap.

Respondent's stated reason for issuing Complainant a written warning is that Complainant failed to follow Ogorek's directions when Complainant damaged a saw; Complainant complied with Ogorek's directions; in early May 2005, non-handicapped mechanics, such as Jaime Macias and Miguel Jimenez,

failed to follow Ogorek's directions when they were cutting flooring; Respondent did not issue Miguel Jimenez and Jaime Macias a written warning for failing to follow Ogorek's directions when they were cutting flooring.

Complainant's Count V alleges:

On or about June 8, 2005, Respondent discharged Complainant because of his physical handicap.

Respondent's stated reason for discharging Complainant is that Complainant endangered himself by walking behind a moving trailer; Complainant was not in the path of the moving trailer; in June 2005, Miguel Jimenez, a non-handicapped mechanic, became injured at work because he failed to abide by Respondent's procedure to wear safety glasses; Respondent did not discharge Jimenez for violating its safety procedure.

7. Daniel M. Starr (Starr) of the law firm Starr & Rowells filed an appearance on behalf of Respondent on March 7, 2007. Respondent filed a verified answer to the Complaint on March 28, 2007.
8. On June 14, 2007, Starr filed a motion for leave to withdraw as counsel. On June 27, 2007, Starr appeared for hearing on the motion and tendered proof of certified service of the motion on Respondent. An order was entered granting Starr's motion to withdraw and ordering Respondent to retain substitute counsel to appear on the next status date set for July 25, 2007.
9. On July 25, 2007, the matter was continued to September 11, 2007 to allow Respondent additional time to secure counsel. On September 11, 2007, Respondent appeared through its representative, Russell Ogorek (Ogorek). Ogorek was advised that, as a corporation, Respondent must be represented by counsel in appearing before this tribunal.
10. On October 3, 2007, Kenneth Goldin of the law firm Goldin Hill & Associates, filed an appearance on behalf of Respondent.
11. Complainant filed a motion for leave to initiate discovery on October 17, 2007 and set the matter to be heard on October 24, 2007. On October 24, 2007, despite

having filed an appearance, Respondent's counsel failed to appear. An order was entered granting Complainant's motion to initiate discovery. The order ordered the parties to propound discovery no later than November 7, 2007 and set a discovery status for January 8, 2008.

12. On January 8, 2008, Complainant appeared through counsel; Respondent did not appear. An order was entered ordering all discovery to be served no later than January 31, 2008 and all responses to be served no later than March 14, 2008. A status was set for March 26, 2008.
13. On March 18, 2008, Respondent's attorney, Kenneth Goldin, filed a motion for leave to withdraw as counsel. On April 18, 2008, Respondent filed a supplement to his motion for leave to withdraw. Complainant filed a response in opposition to Respondent's counsel's motion for leave to withdraw on May 9, 2008. The motion was granted by order of June 10, 2008. The order granted Respondent fifteen days to obtain substitute counsel and set a status for June 25, 2008.
14. On June 25, 2008, Complainant appeared through counsel; Respondent did not appear. Complainant was granted leave to file a motion for default judgment by August 7, 2008, and Respondent was ordered to file a response no later than August 22, 2008. Hearing on the motion was set for August 27, 2008. Complainant filed a motion for default judgment on August 7, 2008; Respondent did not file a response. On August 27, 2008, Complainant appeared for hearing on the motion; Respondent failed to appear. The motion for default was granted and a public hearing on the issue of damages was set for October 28, 2008. By order of October 21, 2008, the hearing date was continued to January 7, 2009.
15. Respondent discharged Complainant on June 8, 2005. Complainant was unemployed from the time of discharge until he found part-time work on July 21, 2005 at Kelly's Truck Center. Complainant was employed by Kelly's Truck Center

from July 21, 2005 until October 3, 2005. Complainant then remained unemployed until he resumed full-time employment in March, 2006 at Preferred Fleet Service.

16. Complainant made \$11.77 per hour and worked 40 hours a week while working for Respondent. Complainant would have earned 40 hours of regular pay (\$470.80) each week for 36 weeks ($\$470.80 \times 36$) for a total of \$16,948.80 had he not been illegally discharged.
17. Complainant made \$4,728.00 while employed at Kelly's Truck Center. Complainant is entitled to the difference between \$16,948.80 and \$4,728 for a total of \$12,220.80 in back wages.

CONCLUSIONS OF LAW

1. Complainant is an "employee" and Respondent is an "employer" in accordance with the Act.
2. Section 5300.750(e) of the Commission rules authorizes a recommended order of default as a sanction for a party's failure to prosecute his case, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous order of the Administrative Law Judge.
3. Because Respondent has been ruled in default, Respondent has admitted the allegations in the Complaint and is liable for violating the Act. Specifically, Respondent admits that it subjected Complainant to practices of physical handicap discrimination, in violation of Section 2-102(A) of the Act.
4. Complainant is entitled to an award of back pay, emotional distress damages and reasonable attorneys' fees and costs incurred in the litigation of this matter.

DISCUSSION

Default

Complainant filed a motion for default judgment on August 7, 2008. Complainant argued that default was in order because Respondent's counsel had failed to appear for scheduled status hearings and because Respondent failed to secure substitute counsel when his second attorney withdrew. Complainant contended that Respondent's conduct resulted in unreasonable delay of these proceedings. Respondent did not file a response in opposition to the motion and failed to appear for scheduled hearing on the motion.

Section 5300.750(e) of the Procedural Rules of the Illinois Human Rights Commission authorizes a recommendation for default where a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance, or unreasonably refuses to comply with any Order entered, or otherwise engages in conduct which unreasonably delays or protracts the proceedings.

Respondent's conduct in failing to secure substitute counsel to appear for scheduled hearings in this matter resulted in unreasonable delay of these proceedings, justifying the order of default.

A public hearing on damages was held on January 7, 2009. Respondent failed to appear; Complainant appeared represented by counsel and offered evidence and testimony on the issue of damages.

Damages

When a violation of the Act has occurred, the complainant should be placed in the position in which he would have been but for the discrimination. *Clark v. Illinois Human Rights Commission*, 141 Ill App 3d 178, (1st Dist 1986). The purpose of a damage award is to make the Complainant whole.

Back Pay- Complainant requests \$13, 492.00 in lost wages. Complainant credibly testified as to the issue of lost wages. Complainant said that he worked 40 hours a week and made \$11.77 per hour while he worked for Respondent. Complainant said that he worked overtime hours, but admitted that he “vaguely” worked overtime hours and that he worked “[m]aybe two or four hours a month at the most.”

The record shows that Complainant only worked for Respondent for nine months and Complainant’s testimony supports that he worked very few, if any, overtime hours. Complainant’s vague memory and speculative testimony as to the number of hours of overtime he worked weighs against the awarding of any lost wages due to overtime hours.

Complainant credibly testified that he was unemployed from the time of his discharge on June 8, 2005, until he found part time work on July 21, 2005, which ended on October 3, 2005. Complainant began full-time employment for Fleet Services in March, 2006.

Complainant is entitled to 40 hours of regular pay ($11.77 \times 40 \text{ hours} = \470.80) each week for the 36 weeks he remained without full time employment ($470.80 \times 36 = \$16,948.80$). However, Complainant met his duty to mitigate his damages when he found part-time employment at Kelly’s Truck Center on July 21, 2005, and worked there until October 3, 2005. Complainant made \$4,728.00 in wages while employed at Kelly’s Truck Center. Therefore, Complainant is entitled to \$12,220.80 in back wages, which is the difference between \$16,948.80 and \$4,728.00.

Union Membership- Complainant testified that he lost his union membership when he was illegally discharged. Complainant presented his employment agreement with Respondent as his Exhibit 2. The agreement provides that each employee must become a member of the union as a condition of employment. The agreement provides that Respondent is to deduct union membership dues from the employee’s pay check.

Complainant has not put forth adequate reasoning of how he was damaged by his loss of union membership, which was bestowed upon him by Respondent as a condition of the job position. Union dues were not paid by Respondent as a benefit to Complainant; union dues were deducted from Complainant's paycheck. Therefore, the back pay damages award adequately compensates Complainant.

Emotional Distress - Complainant requests \$10,000.00 for emotional distress suffered as a result of Ogorek's conduct in making derogatory comments about his physical disability in the workplace. The presumption under the Act is that recovery of all pecuniary losses will fully compensate an aggrieved party for his losses. *Smith v. Cook County Sheriff's Office*, IHRC 1077(RRP), October 31, 1985. However, the Commission will award damages beyond pecuniary loss if it is absolutely clear from the record that the recovery of pecuniary loss will not adequately compensate the Complainant for his actual damages. *Kincaid v. Village of Bellwood, Bd. of Fire and Police Commissioners*, IHRC, 1591, Nov. 3, 1987. The measure of emotional distress damages is based upon the nature and duration of suffering experienced by the Complainant. The amount should be sufficient to ease one's feelings regarding the civil rights violation. *Smith v. Cook County Sheriff's Office*, IHRC, 1077 (RRP), Oct. 31, 1985.

The Commission accepts a Complainant's own testimony as a sufficient basis for awarding emotional distress damages. *Nichols and Boyd A. Jarrell & Co., Inc.*, IHRC, 874(J), Nov. 9, 1984. Complainant credibly testified as to his emotional suffering as a result of Ogorek's derogatory statements made about Complainant's disability. Complainant testified that "[i]t hurt a lot, you know, broke me down, you know, just general—just circumstances that nobody should have to deal with. It just made me feel like crap the whole time I was employed there." (Tr. p. 18, 15-19). Complainant further stated that Ogorek's comments affected his confidence and embarrassed him. Complainant said that he did not tell his mom or other family members about Ogorek's

comments because he didn't want to risk the embarrassment. Complainant explained that becoming employed in the diesel field "was supposed to be a new start" and "just dealing with him [Ogorek] there just puts a whole new shadow over the whole thing that I'm doing with myself." (Tr. p.20, 1-6).

The record supports that Complainant is entitled to an award for emotional distress to adequately compensate him for his actual damages. I find the emotional distress here similar to that felt by the complainant in the Commission case *Johnston and City of Chicago*, IHRC, 10945, March 30, 2004. In Johnston, the female police officer was passed over for a promotion that she deserved in favor of a male police officer. The rejection caused her to feel demoralized, humiliated, embarrassed, and frustrated. The complainant in Johnston was awarded \$10,000.00 to compensate her for her emotional distress. I find a comparable award to be justified here.

Reinstatement

Complainant does not request reinstatement

Attorneys' fees

Once there has been a finding that a respondent has violated the Act and a complainant's damages have been determined, the focus of the remaining inquiry concerns the amount of attorneys' fees and costs that should be awarded to a complainant under the Act. See 775 ILCS 5/8A-104(G). In *Clark and Champaign National Bank*, IHRC, 354(J), July 2, 1982, the Commission set forth numerous factors as guidelines when considering attorney fee and costs awards. The burden is upon the party seeking an award of attorneys' fees to support his request with sufficient specific and reliable information and documentation. *Wong and Kraft, Inc.*, IHRC 2378, April 29, 1994.

Complainant requests \$108,958.87 in attorney's fees. Complainant submits a detailed record of time expenditures and an affidavit by his attorney of record, Sallie G.

Smylie (Smylie), partner of Kirkland and Ellis LLP (Kirkland), averring to the work performed and the hourly rates charged for litigating this matter.

Appropriate Hourly Rate

When considering a fee petition, it is first necessary to establish a reasonable hourly rate. An appropriate hourly rate is generally dependent upon the actual hourly rate the attorney charges, the experience of the attorney and previous awards of attorney's fees to counsel. *Clark and Champaign National Bank, supra*. An attorney requesting fees must provide specific evidence of the prevailing community rate for the type of work for which he seeks an award. *Pyeatt and Dorf*, IHRC S-10513, Nov. 14, 2000. Affidavits reciting the precise fees that attorneys with similar qualifications have received from fee-paying clients in comparable cases can aid in determining prevailing community rate information. *Tolbert and Fraternal Order of Eagles Olney Airei*, IHRC, S-12132, July 7, 2005; *Pyeatt and Dorff, supra*.

In her affidavit, Smylie explains that the hourly rates of Kirkland attorneys and non-attorney professionals are determined by its Firm Committee. Smylie says that its Firm Committee sets the rates to be consistent with other peer law firms taking into account levels of seniority, geographic location by office, level of expertise within the specific practice area and reputation within and outside the firm. Smylie states that based on the evaluation and analysis by the firm, the rates charged are competitive in the relevant legal markets and in the specific areas of specialization in which the firm practices.

Complainant submits no further documentation to support the hourly rates requested for the services of three attorneys, two law clerks, two project assistants, two legal assistants and one library research specialist who performed services for the litigation of this matter. Complainant provides no detailed explanation of the

experience and expertise of its attorneys and non-attorney professionals, no affidavits by any area attorneys affirming the reasonableness of the requested rates and no evidence that similar awards have been approved in legal tribunals.

My own research of recent Commission decisions suggests that the rates requested have no precedent in this tribunal. Although the provision of the Act awarding attorneys' fees should be accorded liberal construction, the purpose of such awards is not to provide a windfall for prevailing attorneys. *Johnston v City of Chicago Police Department*, IHRC 10945, Aug. 31, 2004. When complainant has not submitted affidavits from other attorneys with similar experience in support of requested hourly rates, prior Commission decisions have been considered in analyzing the issue. *Lemery and Balmoral Racing Club*, IHRC 11835, Feb 1, 2006; *Wood and University of Illinois at Urbana/Champaign*, IHRC, 4434(S), Nov. 21, 1994.

In a recent decision, *French and Carter Excavating*, IHRC, 07-552, Aug. 5, 2008, the Commission approved attorney's fees in the amount of \$350.00 per hour for the litigation of a case in which the respondent was ruled in default and a damages hearing was held. The record attorney in *French* submitted an affidavit in support of his requested hourly rate indicating he had been a partner in the law firm representing the complainant for eleven years and had previously been a partner in the predecessor law firm. The attorney averred that he had been practicing in the area of employment law for fifteen years and had conducted 10 jury trials and 15 bench trials in federal district and Illinois state courts and had conducted over 25 administrative hearings before this Commission, the Equal Employment Opportunity Commission and other various civil service commissions on employment matters.

The attorney in *French* provided much more information in support of his requested rate than that provided in the present case. Because I find Complainant's

evidence in support of the requested rate thin in this record and because I further find no precedent for such high fee awards in this tribunal, the requested rates should be reduced. An administrative law judge may base a fee award on her own sense of the applicable community rate. See, for example, *Pyeatt and Dorf, supra* and *Frankenburg and State of Illinois Dept. of Corrections*, IHRC 2852, Nov. 3, 1988. Accordingly, I find a reduction of 50% warranted for each of the attorneys who performed legal services in this matter.

Sallie G. Smylie

Smylie is a partner in the law firm Kirkland & Ellis LLP (Kirkland). Complainant requests \$625.00 per hour for services performed in 2007 and \$665.00 per hour for services performed in 2008 by Smylie. Pursuant to the above discussion, Smylie's rate is reduced to \$312.50 per hour for work performed in 2007 and \$ 332.50 per hour for work performed in 2008.

Christa Cottrell

Complainant requests \$315.00 per hour for legal services performed by Attorney Christa Cottrell from January 1, 2007 through June 30, 2007; \$355.00 per hour for services performed from July 1, 2007 through December 31, 2007; \$395 per hour for services performed from January 1, 2008 through June 30, 2008; and \$435.00 per hour for services performed from July 1, 2008 through December 31, 2008.

Cottrell's rates are reduced as follows: for work performed from January 1, 2007 through June 30, 2007 the rate is reduced to \$157.50; the rate is reduced to \$177.50 per hour for work performed from July 1, 2007 through December 31, 2007; the rate is reduced to \$197.50 per hour for work performed from January 1, 2008 through June 30, 2008; and the rate is reduced to \$217.50 per hour for work performed from July 1, 2008 through December 31, 2008

Marisa Miller

Complainant requests \$275.00 per hour for legal services performed by Attorney Marisa Miller from January 1, 2007 through June 30, 2007; \$315.00 per hour for work performed from July 1, 2007 through December 31, 2007; \$350.00 for work performed from January 1, 2008 through June 30, 2008; and \$395.00 per hour for work performed from July 1, 2008 through December 31, 2008.

Miller's rate is reduced as follows: \$137.50 per hour for work performed from January 1, 2007 through June 30, 2007; \$157.50 per hour for work performed from July 1, 2007 through December 31, 2007; \$175.00 per hour for work performed from January 1, 2008 through June 30, 2008; and \$197.50 per hour for work performed from July 1, 2008 through December 31, 2008.

Law Clerks Katrina Ng and Russell King

Complainant requests separate hourly rates for work performed by two law clerks. Complainant requests \$195.00 per hour for work performed by Katrina Ng and \$205.00 per hour for work performed by Russell King. Complainant submits no evidence to support this hourly rate for the services of either of the two law clerks. While I find it appropriate to award fees for work performed by law clerks, I find the requested rates for the two law clerks to be unreasonable.

In the recent past, the Commission has found fees for law clerks at the rate of \$65.00 per hour (Johnson and AutoZone, IHRC, 05-296, May 1, 2006) and \$75.00 per hour (Alarcon and McManimen, IHRC, 06-030, January 22, 2007) to be reasonable. To bring the requested hourly rates for both law clerks in line with recent Commission precedent, I find it reasonable to apply the same formula here as I did in the fee analysis for the attorneys in this matter. Therefore, a 50% reduction in the requested hourly rates

is reasonable and appropriate. Ng's rate is reduced to \$97.50 per hour and King's rate is reduced to \$102.50 per hour.

Legal Assistants Brandon Phillips and Marc Orejuela

Complainant requests separate hourly rates for work performed by two Legal Assistants. Complainant requests \$180.00 per hour for work performed by Brandon Phillips; and \$240.00 per hour for work performed by Marc Orejuela. Pursuant to the above discussion, Phillips's rate is reduced to \$90.00 per hour and Orejuela's rate is reduced to \$120.00 per hour.

Project Assistants Adam Hlavaty and Naphtalia Lafontant

Complainant requests separate hourly rates for services performed by two Project Assistants. Complainant requests \$150.00 per hour for work performed by Adam Hlavaty; and \$145.00 per hour for work performed by Naphtalia Lafontant. Because Complainant provides no documentation as to the reasonable rate of a project assistant and my research finds no guidance on this issue, there is no reason to deviate from the 50% reduction formula that has been applied thus far. Hlavaty's hourly rate is reduced to \$75.00 per hour and Lafontant's rate is reduced to \$72.50 per hour.

Library Research Specialist

Finally, Complainant requests \$200.00 per hour for work performed by Kirkland's Library Research Specialist. Smylie states that the job duties of the Library Research Specialist included monitoring public filings based on Complainant's information that Respondent may have been in the process of liquidation. Again, with absolutely no evidence on the appropriate rate for this service, I find a 50% reduction to be in order. Complainant is entitled to \$100.00 per hour for the services of the Library Research Assistant.

Appropriate Number of Hours Expended

Once the hourly rate is decided upon, the next step is to determine whether the hours claimed are justified. Complainant presents a billing itemization as to time spent and billed for services performed. The billing statement is sufficiently detailed for examination. Complainant requests an award for a total of 325 hours of legal work performed by all attorneys and non-attorney professionals. Based on the foregoing analysis, the fee award allocation is as follows:

Smylie

2007 - 8.75 hours x 312.50 per hour = \$2,734.37

2008 - 7.75 hours x \$332.50 per hour = \$2,576.87

Total	<u>\$5,311.24</u>
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Cotrell

Jan 1, 2007 - June 30, 2007 19.25 hours x \$157.50 per hour = \$3,031.88

July 1, 2007 - Dec. 31, 2007 15.50 hours x \$177.50 per hour = \$2,751.25

Jan 1, 2008 - June 30, 2008 53.50 hours x \$197.50 per hour = \$10,566.25

July 1, 2008- Dec. 31, 2008 16.50 hours x \$217.50 per hour = \$ 3,588.75

Total	<u>\$19,938.13</u>
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Miller

Jan.1, 2007 - June 30, 2007 47.5 hours x \$137.50 = \$6,531.25

July 1, 2007 - Dec. 31, 2007 11.00 hours x \$157.50 = \$1,732.50

Jan. 1, 2008 - June 30, 2008 14.25 hours x \$175.00 = \$2,493.75

July 1, 2008 - Dec. 31, 2008 26.00 hours x \$197.50 = \$5,135.00

<u>\$15,892.50</u>

Ng

18.5 hours x \$97.50 per hour = \$1,803.75

King

1.75 hours x 102.5 per hour = \$179.37

Phillips

22.0 hours x \$90 per hour = \$1,980.00

Oregula

10.0 hours x \$120 per hour = \$1,200.00

Halavaty

19.5 hours x \$75 per hour = \$1,462.50

LaFontant
14.25 hours x \$72.50 per hour= \$1033.12

Library Research Specialist
2.75 hours x \$100.00 per hour = \$275.00

Complainant is entitled to \$49,075.62 in attorneys' and non-attorneys' professional fees.

Costs

Complainant requests \$6,518.87 in costs. Complainant submits a summary and detailed computer printout indicating various costs for copies or prints, binding, tab/indexes/dividers, scanned images, standard prints, postage overnight delivery, calendar/court services, working meals/K&E and others, catering expenses, computer database research, secretarial overtime

After examining the cost itemization, I find the following to be unreasonable:

Item 04004 for Calendar/Court Services in the amount of \$225.00 is deducted as ambiguous and unreasonable in that neither the Department nor the Commission charges filing or other service fees.

Item 06810 for catering expenses in the amount of \$48.00 and item 06802 for working meals/ K& E and others in the amount of \$48.00, is deducted as Complainant submits no authority to support that meals are reasonable litigation costs.

Item 08004 in the amount of \$20.01 for secretarial overtime is deducted as Kirkland has allocated ten attorneys and non-attorney professionals to handle this case and it is certainly not clear on the record why secretarial overtime would have been required.

Complainant is entitled to \$6,177.86 in reasonable costs incurred in litigating this matter.

Interest

Complainant is entitled to interest on the back pay award in order to make him whole.

RECOMMENDATION

Accordingly, it is recommended that the Complaint in this matter be sustained on the handicap discrimination claim and that Complainant be awarded the following relief:

1. That Respondent be held in default;
2. That Respondent pay to Complainant lost back pay in the amount of \$12,220.00;
3. That Respondent pay to Complainant \$10,000.00 in emotional damages;
4. That Respondent pay to Complainant prejudgment interest on the back pay award, said interest to be calculated as set forth at 56 Ill.Admin.Code, Section 5300.1145;
5. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;
6. That Respondent be ordered to cease and desist from discriminating on the basis of handicap;
7. That Respondent pay to Complainant reasonable attorneys' fees in the amount of \$49,075.62 and reasonable costs incurred in the prosecution of this matter in the amount of \$6,177.86.

HUMAN RIGHTS COMMISSION

ENTERED: June 29, 2009

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section